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17 UNITED STATES DISTRICT COURT

18 FOR THE CENTRAL DISTRICT OF CALIFORNIA

19 UNITED STATES OF AMERICA,) CR No. 12-0560-JFW
20 Plaintiff,)
21 v.) GOVERNMENT'S APPLICATION FOR
22 KAREN GASPARIAN,) ENTRY OF PRELIMINARY ORDER OF
23 Defendant.) FORFEITURE AND CRIMINAL
24) FORFEITURE MONEY JUDGMENT AT
25) SENTENCING; MEMORANDUM OF POINTS
26) AND AUTHORITIES
27)
28) SENTENCING DATE: January 14, 2013
TIME: 10:00 AM
CTRM: 16

1 Plaintiff, United States of America, by and through its
2 undersigned attorneys, hereby applies for entry of a preliminary
3 order of forfeiture and personal money judgment of forfeiture at
4 sentencing in the amount of \$736,259.24, pursuant to Fed. R.
5 Crim. P. 32.2(b), and the defendant's plea of guilty to Count
6 One of the Indictment.

7 This application is supported by the factual basis for the
8 guilty plea; the attached Declaration; and the matters set forth
9 in the accompanying Memorandum of Points and Authorities.

10
11 Dated: December 17, 2012

12 Respectfully submitted,

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15 /s/
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MEMORANDUM OF POINTS AND AUTHORITIES**I. INTRODUCTION**

Defendant Karen Gasparian ("defendant") pled guilty to Counts 1 (conspiracy to fail to file currency transaction reports) and 12 (failure to have an adequate anti-money laundering program) of the Indictment. The Indictment gave the defendant notice that, upon conviction or a plea of guilty to Count One (conspiracy to cause a financial institution to fail to file a currency transaction report, in violation of 18 U.S.C. § 371), the government would seek criminal forfeiture. Pursuant to Rule 32.2(b), Federal Rules of Criminal Procedure, the government now applies for the entry of a preliminary order of forfeiture and a criminal forfeiture money judgment against the defendant. The proposed money judgment is requested in the amount of \$736,259.24, which sum the defendant and his co-conspirator G&A Check Cashing received from their violation of 18 U.S.C. § 371 and 31 U.S.C. §§ 5324(a)(1) and 5313(a).

II. FACTS SUPPORTING ENTRY OF MONEY JUDGMENT**A. Facts Admitted to at Plea Hearing**

For the purposes of this Application, the government refers the Court to the factual basis admitted by the defendant at defendant's plea hearing on September 20, 2012. At that hearing, the defendant admitted the following:

From at least 2006 through 2011, defendant Karen Gasparian was employed at G&A Check Cashing("G&A"), a check cashing store located at 2901 Beverly Boulevard, Los Angeles, California. As a check cashing store, G&A was a financial institution within

1 the meaning of the Bank Secrecy Act ("BSA"). G&A was engaged in
2 the business of, among other things, cashing checks for other
3 people for currency.

4 As part of defendant's duties at G&A, he cashed and
5 facilitated the cashing of checks. Defendant was aware that the
6 BSA required financial institutions like G&A to file a "Currency
7 Transaction Report" ("CTR") with the Department of Treasury for
8 any single transaction where it provided more than \$10,000 to an
9 individual on a single day. For the purposes of determining
10 whether filing a CTR was mandatory, defendant knew that the BSA
11 required G&A to aggregate multiple currency transactions and
12 treat them as a single transaction if the multiple transactions
13 were by or on behalf of one person and resulted cash-out
14 totaling more than \$10,000 during any one business day.

15 In addition, defendant was aware that the BSA required G&A
16 to develop, implement, and maintain an effective anti-money
17 laundering program reasonably designed to prevent G&A from being
18 used to facilitate money laundering. Despite this knowledge,
19 defendant failed to implement an effective money laundering
20 policy by not obtaining identification and not filing CTRs when
21 he knew they were required.¹

22 At some point between 2009 and 2011, defendant knowingly
23 entered into an agreement with another (other than the two
24 confidential government sources) to cash bundles of checks which

25
26 ¹ The government does not seek forfeiture for the
27 defendant's plea of guilty to Count 12 in the Indictment because
28 forfeiture is not authorized for a violation of 31 U.S.C.
§ 5318(h).

in aggregate totaled over \$10,000 in one business day, knowing that these bundled transactions were by and on behalf of one person, without filing a CTR. The defendant became a member of the conspiracy knowing its object was to avoid the CTR requirement and intending to help accomplish the object. For these bundled transactions exceeding \$10,000, defendant knew that a CTR was required but did not file the CTRs. As part of the conspiracy, defendant knew the following transactions required a CTR but defendant willfully failed to file one:

APPROXIMATE TRANSACTION DATE	CHECK NUMBERS	TOTAL FACE VALUE OF CHECKS	CASH OUT TOTAL
2/23/2009	1334, 1335, 1336	\$15,000	\$13,800
03/13/2009	1463, 1464, 1465	\$12,903	\$12,000
03/31/2009	1304, 1305, 1306	\$11,828	\$11,000
05/04/2009	1307, 1308, 1309	\$11,828	\$10,999
12/15/2009	1394, 1395, 1396	\$12,903	\$12,247
3/16/2011	1046, 1047, 1048, 1055	\$12,000	\$11,640

B. Facts from Declaration of FBI Special Agent Darrell Twedt

As further discussed in the attached Declaration of Special Agent Darrell Twedt, in May of 2009, the California Franchise Tax Board ("CFTB"), pursuant to a warrant, searched the home of Gagik Gasparian, the owner of G&A, and recovered a binder of checks. A similar binder was recovered from G&A Check Cashing. These two binders showed that from 2006 through 2009, G&A cashed over \$24,541,974.82 in checks through 918 "structured transactions" without ever filing CTRs. The government has been

1 able to trace at least \$11 million of these checks to deposits
2 made into G&A's operating accounts. Records of the checks
3 deposited into one of G&A's operating accounts, that held at
4 First Federal Bank between December 2006 and July 2007, are
5 unavailable due to First Federal Bank's subsequent merger with
6 One West Bank. However, the available records indicate the
7 total deposits and withdrawals on G&A's First Federal account
8 total \$9,694,297.

9 During an undercover operation with Confidential Witness #1
10 ("CW1"), CW1 cashed checks drawn on an undercover FBI account in
11 the name of La Brea Health Diagnostics at G&A on multiple
12 occasions. CW1's check cashing transactions typically took
13 place using an intermediary named Aharon Krkasharyan. On each
14 of these occasions, CW1 would present multiple checks whose
15 aggregate value was over \$10,000. Copies of the checks CW1
16 cashed appear in the binders CFTB recovered from Gagik Gasparian
17 and from G&A. The checks CW1 presented in a single transaction
18 would be copied onto a single page in a binder, dated either the
19 day of or the business day after CW1 delivered the checks to
20 Krkasharyan and the name "Aharon," Krkasharyan's first name, on
21 the bottom of the page. CW1 was charged a 5% fee for his
22 transactions.

23 On one occasion during an undercover operation with
24 Confidential Informant #2 ("CW2"), CW2 went to G&A and met with
25 the defendant. CW2 gave the defendant several signed blank
26 checks purportedly from an account in the name of University Med
27 Tech (an FBI undercover account). CW2 told the defendant that
28

1 he wished to cash \$12,000. The defendant told CW2 that he
2 charges a fee of 3%. CW2 later received \$11,640 from Gasparian
3 for the cashed checks, which reflected the aggregate total of
4 the checks (\$12,000) less G&A's 3% fee of \$360.

5
6 **III. BOTH A PRELIMINARY ORDER OF FORFEITURE AND MONEY JUDGMENT**
7 **ARE PROPERLY ENTERED AT THIS TIME**

8 The defendant's plea to the charges alleged in Count 1 in
9 the Indictment requires the forfeiture of all right, title, and
10 interest in any and all property, real or personal, involved in
11 the conspiracy to violate Title 31, United States Code, Sections
12 5313(a) and 5324(a)(1), and any property traceable to such
13 property, pursuant to 31 U.S.C. § 5317(c)(1)(A). As required in
14 Fed. R. Crim. P. 32.2(a) the defendant was on notice that the
15 government would seek forfeiture because the Indictment included
16 forfeiture allegations related to Count 1.

17 The proposed preliminary order and money judgment in the
18 amount of \$736,259.24 that accompany this application are based
19 on the defendant's plea of guilty to Count 1 of the Indictment,
20 the factual basis for the guilty plea, and the attached
21 Declaration provided with this application. The defendant shall
22 be jointly and severally liable for this amount with his co-
23 conspirator G&A. As contemplated by Rule 32.2(b)(2)(B), the
24 government requests that the Court enter the money judgment
25 prior to or at the time of sentencing.

1 A. The Government Is Entitled to Both a Preliminary Order
2 of Forfeiture and a Money Judgment of Forfeiture in
3 the Amount of \$736,259.24

4 Rule 32.2 of the Federal Rules of Criminal Procedure
5 provides, in pertinent part:

6 As soon as practical after a verdict or finding of
7 guilty, or after a plea of guilty or nolo contendere is
8 accepted, on any count in an indictment or information
9 regarding which criminal forfeiture is sought, the
10 court must determine what property is subject to
11 forfeiture under the applicable statute. . . . If the
12 government seeks a personal money judgment, the court
13 must determine the amount of money that the defendant
14 will be ordered to pay.

15 Fed. R. Crim. P. 32.2(b)(1)(A).

16 In imposing a sentence for a violation of or a conspiracy
17 to violate 31 U.S.C. §§ 5313 and 5324, the Court "shall order
18 the defendant to forfeit all property, real or personal,
19 involved in the offense or traceable thereto. 31 U.S.C. §
20 5317(c)(1). "The term 'involved in' has consistently been
21 interpreted broadly by courts to include any property involved
22 in, used to commit, or used to facilitate the offense." United
23 States v. Seher, 562 F.3d 1344, 1369-70 (11th Cir. 2009)
24 (quotation marks and citation omitted); see United States v.
25 Varrone, 554 F.3d 327, 330-31 (2nd Cir. 2009) (holding that
26 forfeiture of property "involved in" an offense under § 5317(c)
27 requires forfeiture of more than just instrumentalities and
28 upholding forfeiture of the accounts of a check cashing business
29 that failed to file CTRs). "In fixing the amount of forfeiture
30 [under 31 U.S.C. § 5317(c)(1)(A)], the statute . . . affords no
31 leeway: All property involved in the failure to file CTRs is
32 forfeited as well as all property traceable to that offense."

1 United States v. Castello, 611 F.3d 116, 118 (2d Cir. 2010)
2 (ordering district court to impose forfeiture of four percent of
3 the value of the checks exceeding \$10,000 for which no CTRs were
4 filed). Defendants involved in a conspiracy are jointly and
5 severally liable for property subject to forfeiture as the
6 result of the conspiracy. United States v. Spano, 421 F.3d 599,
7 603 (7th Cir. 2005).

8 The government must prove what property is subject to
9 forfeiture, including the amount of a money judgment, by a
10 preponderance of the evidence. See United States v. Garcia-
11 Guizar, 160 F.3d 511, 517-18 (9th Cir. 1998). "The court's
12 [forfeiture] determination may be based on evidence already in
13 the record, including any written plea agreement, and on any
14 additional evidence or information submitted by the parties and
15 accepted by the court as relevant and reliable." Fed. R. Crim.
16 P. 32.2(b)(1)(B).

17 Here, the proof necessary to determine the amount subject
18 to forfeiture is already in the record or is included in the
19 Declaration of Special Agent Twedt. The binders recovered from
20 G&A and its owner, Gagik Gasparian, show that, in the course of
21 the conspiracy to violate 31 U.S.C. §§ 5313(a) and
22 5324(a)(1), the defendant and G&A cashed over \$24,541,974.82 in
23 checks through 866 structured transactions without ever filing
24 CTRs. That these binders reflect the checks cashed in the
25 course of the conspiracy to fail to file CTRs is corroborated by
26 the appearance of the checks cashed by CW1 in these binders,
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28

1 complete with a proper reference to the approximate date of the
2 transaction and the individual to whom the funds should be paid.

3 The government seeks forfeiture of the 3% in fees, that is
4 \$736,259.24, representing the minimum fee charged by the
5 defendant and G&A for over \$24,541,974.82 in recorded
6 transactions in which CTRs should have been filed, as property
7 involved in or traceable to the conspiracy to cash checks
8 without filing of required CTRs. The fees earned by the
9 defendant and G&A in the course of the conspiracy were involved
10 in the course of the conspiracy by facilitating the filing
11 offenses by making them profitable and supporting the ongoing
12 business. The fees were also deducted from the bundled checks
13 that G&A and the defendant cashed without filing.

14 Despite the efforts of law enforcement, the government does
15 not have custody of and cannot locate the monies directly
16 involved in the conspiracy activity described in Count 1.
17 Because the specific property involved in the crime cannot be
18 located, an order forfeiting a money judgment equal to the
19 amount involved in that offense is appropriate. See Fed. R.
20 Crim. P. 32.2(b)(1)(A). A money judgment preserves one of the
21 primary purposes of forfeiture, namely to ensure that those that
22 break the law do not profit from their crimes. United States v.
23 Ursery, 518 U.S. 267, 291 (1996); see United States v. Casey,
24 444 F.3d 1071, 1077 (9th Cir. 2006) (because forfeiture is
25 mandatory, a defendant who has already spent the money involved
26 in the underlying offense must pay a money judgment; otherwise,
27 he will have been allowed to enjoy the fruits of his crime,

1 which would be inconsistent with the remedial purpose of the
2 forfeiture laws). Such a judgment represents the "defendant's
3 continuing obligation to forfeit the money derived from or used
4 to commit his criminal offense whether he has retained the
5 actual dollars in his possession or not." Stefan D. Cassella,
6 Asset Forfeiture Law in the United States, §19-4, p. 579 (1 Ed.,
7 JurisNet 2007).

8 After entry of the money judgment, if the government at any
9 time collects on the money judgment, the outstanding money
10 judgment amount shall be reduced to the extent any specific
11 property is successfully forfeited. See Fed. R. Crim. P.
12 32.2(e).

13 **B. Criminal Forfeiture is Mandatory**

14 Forfeiture is a mandatory part of the defendant's sentence
15 where provided by statute. United States v. Nava, 404 F.3d
16 1119, 1124 (9th Cir. 2005) (the district court must order
17 forfeiture in addition to imposing any other sentence); United
18 States v. Hill, 167 F.3d 1055, 1073 (6th Cir. 1999). Thus, the
19 Court must order the forfeiture of property shown to have been
20 involved in the crime to which the defendant pled guilty and,
21 where appropriate, issue a forfeiture money judgment.

22 **C. The Defendant and G&A are Jointly and Severally Liable**

23 The defendant and G&A are jointly and severally liable for
24 the requested \$736,259.24 money judgment as co-conspirators.
25 United States v. Elder, 682 F.3d 1065, 1073 (8th Cir. 2012)
26 (explaining that a co-conspirator "is jointly and severally
27 liable to forfeit the proceeds of the criminal enterprise");
28

1 United States v. Commercial Carrier, Inc., 232 F. Supp. 2d 201,
2 204 (S.D.N.Y. 2002) (imposing money judgment and holding that
3 "coconspirators are liable jointly and severally to forfeit the
4 reasonably foreseeable proceeds of their criminal activity").

5 **IV. FORFEITURE MUST BE PRONOUNCED AT SENTENCING**

6 At sentencing, pursuant to Rule 32.2(b)(4)(A) of the
7 Federal Rules of Criminal Procedure, the order of forfeiture
8 becomes final as to the defendant. The Court must pronounce the
9 forfeiture conditions orally as part of the sentence imposed on
10 the defendant (or at least make reference to them) and include
11 the forfeiture in the judgment and commitment order. Rule
12 32.2(b)(4)(B). The government recommends that the following
13 language be read to the defendant and modified as appropriate
14 for inclusion in the judgment and commitment order:

15 Pursuant to 31 U.S.C. § 5317(c)(1)(A), defendant shall
16 forfeit to the United States the sum of \$736,259.24 in
17 the form of a personal money judgment for the violation
18 described in Count One of the Indictment.

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1 V. CONCLUSION

2 For the foregoing reasons, the Court should enter the
3 proposed Preliminary Order of Forfeiture and Money Judgment.

4 DATED: December 17, 2012

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6 Respectfully submitted,
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